

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA POWER COMPANY D/B/A NV  
ENERGY, A NEVADA CORPORATION,  
Appellant,  
vs.  
CITY OF HENDERSON, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,  
Respondent.

No. 56374

**FILED**

FEB 24 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Malone  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a real property action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Nevada Power Company (NV Power) applied to respondent City of Henderson for a conditional use permit to construct a 145-foot tall electric transmission line.<sup>1</sup> The Henderson City Council denied the requested permit, citing NV Power's failure to meet all of the necessary requirements under the local ordinance. See HMC 19.2.8(F)(1).<sup>2</sup> The district court then denied NV Power's petition for judicial review.

Standard of review

This court's review of an administrative decision is "limited to a determination of whether the agency or municipality . . . committed an abuse of discretion." Stratosphere Gaming Corp. v. Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004) (quoting City of Reno v. Harris, 111 Nev.

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<sup>1</sup>As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

<sup>2</sup>In January 2010, title 19 of the Henderson Municipal Code was replaced in its entirety. Citations to the code in this order refer to the 2009 version.

672, 677, 895 P.2d 663, 666 (1995)). In making this determination, we are “limited to the record made before the City” and must uphold a discretionary act that is supported by substantial evidence. City of Las Vegas v. Laughlin, 111 Nev. 557, 558, 893 P.2d 383, 384 (1995) (defining substantial evidence as that which “a reasonable mind might accept as adequate to support a conclusion” (internal quotations omitted)).

Substantial evidence supports the City Council’s decision

In denying NV Power’s permit request, the City Council found that NV Power’s proposed transmission line was not in compliance with a number of the requisite criteria set forth in the local ordinance. See HMC 19.2.8(F)(1) (providing a list of seven criteria, all of which must be satisfied before a permit may issue)

On appeal, NV Power contends that the City Council abused its discretion in denying the conditional use permit by failing to support its findings with substantial evidence.<sup>3</sup> HMC 19.2.8.(A), (F) (setting forth

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<sup>3</sup>In addition, NV Power makes two alternative arguments. First, it alleges that the City Council improperly relied on public opinion to support its decision. This argument lacks merit, as HMC 19.2.8(A) expressly encourages “public review and evaluation.” Furthermore, NV Power’s reliance on City Council, Reno v. Travelers Hotel, 100 Nev. 436, 683 P.2d 960 (1984) is misplaced, as we have since distinguished Travelers in Laughlin, 111 Nev. at 559-60, 893 P.2d at 385 (concluding “that the concerns expressed by the public, specifically those over . . . preserving the residential nature of the neighborhood, establish a valid basis for the denial” of a conditional use permit).

Second, NV Power argues that the City Council failed to make written findings as required by ordinance. We disagree, as HMC 19.2.8(G) only requires the Planning Commission’s decision to be accompanied by written findings. To the extent that NV Power also alleges that the Planning Commission failed to timely provide written findings, we conclude that any delay was harmless because NV Power received a copy of the findings prior to filing for appeal with the City Council.

a “discretionary approval process” contingent upon the City Council determining that all of the requisite criteria have been met). We disagree.

First, the City Council determined that the proposed use was not in compliance with HMC 19.2.8(F)(1)(b) (stating that the use must be “compatible with adjacent uses in terms of scale, site design and operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust and other external impacts)”).

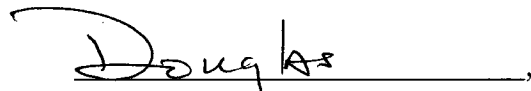
Here, the City Council considered photos of the proposed 145-foot metal poles with 20 transmission wires compared to the existing 35-foot wooden poles with 3 wires. At least two councilmembers expressly raised their concerns that the proposed transmission line was incompatible with the existing residential neighborhoods based on their personal knowledge of conditions in the subject area. Moreover, residents expressed an outpouring of concern with the proposed transmission line, complaining that it was obtrusive, inappropriate, and an inconsistent land use. See Laughlin, 111 Nev. at 559-60, 893 P.2d at 385; McKenzie v. Shelly, 77 Nev. 237, 240-41, 362 P.2d 268, 269-70 (1961) (holding that a city council may take into consideration the testimony from a public hearing, maps of the area, communications submitted to the commission, and the personal knowledge of its own members in reviewing an application for a conditional use permit). Ultimately, the City Council concluded that the proposed power line was too disproportionate in scale with the existing community.


Next, the City Council concluded that the proposed transmission line was not in compliance with HMC 19.2.8(F)(1)(d) (“The proposed use will not cause substantial diminution in value of other property in the neighborhood in which it is to be located.”). The record indicates there was significant public concern related to the impact on

homes built within the expanded fall zone. Numerous residents explained that the increased pole height (from 35 feet to 145 feet) would place their homes within the fall zone, which would preclude them from obtaining financing or building permits to develop lots that were already purchased along the existing power line. Additionally, NV Power's own experts acknowledged the potential for diminution of property values, pointing to fall-zone safety issues and the fact that overhead power transmission lines are unsightly.<sup>4</sup>

Therefore, we find there is substantial evidence in the record to support the City Council's determination that NV Power's proposed transmission line was not in total compliance with HMC 19.2.8(F)(1). Stratosphere, 120 Nev. at 530, 96 P.3d at 761 (noting that this court "cannot substitute [its] judgment for that of the City Council as to the weight of the evidence"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>Although the City Council cites at least one other criterion under HMC 19.2.8(F)(1) that NV Power failed to satisfy, we decline further discussion as non-compliance with a single criterion is sufficient grounds for denying a permit application.

cc: Hon. Susan Johnson, District Judge  
Michael H. Singer, Settlement Judge  
Morris Peterson/Las Vegas  
Morris Peterson/Reno  
Henderson City Attorney  
Eighth District Court Clerk